IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13460 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T CORPN

Versus

MUDUBHAI PANCHABHAI JADIA

Appearance:

1. Special Civil Application No. 13460 of 2000

MR HS MUNSHAW for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Munshaw for the petitioner and Mr. Vaishnav for the respondent workman.

By way of this petition, the petitioner has

challenged the award made by the labour court, Junagadh in Reference No. 186 of 1991 dated 30th March, 2000 wherein the labour court has granted reinstatement with continuity of service with sixty per cent of the back wages for the intervening period.

This petition was admitted by this court by issuing rule thereon and ad.interim relief has been granted in terms of para 8(C) of the petition by order dated 13th February, 2001.

During the course of hearing, learned advocate Mr. Munshaw has submitted that the respondent workman was an employee of the corporation and was working in the cadre of driver. The respondent had unauthorizedly and illegally driven the bus of the corporation bearing registration No. GRU 7387 on 23rd October, 1987 which was in fact being driven by a regular driver of the bus namely Mr. Khumansinh K. Solanki. In fact, the respondent herein had stated in his statement of claim that he was on sick leave from 22nd October, 1987 to 23rd October, 1987. The said bus while being driven by the respondent herein met with an accident with a truck which has resulted into death of five passengers and injuries to six passengers and damage has also been caused to the bus to the tune of Rs.15,000/-. In connection with the said incident, the respondent was served with charge sheet which was replied by the respondent and thereafter departmental inquiry was held against him and then show cause notice was issued and ultimately, he was dismissed from service by order dated 12th January, 1990 which order of dismissal was challenged by the respondent by filing aforesaid reference before the labour court after raising an industrial dispute. Learned advocate Mr. Munshaw for the petitioner has submitted that the defence raised by the respondent that he was on leave and was admitted in the hospital has not been proved by the workman, no doubt, he admitted that he was on leave for a period of two days but the fact of his having been admitted in the hospital has not been proved by the workman before the labour court or before the departmental authority and, therefore, the labour court ought not to have interfered with the order of punishment imposed by the corporation. He has further submitted that before the inquiry officer, police papers were produced by the reporter wherein the statements of passengers were recorded by the police authority wherein the passengers have stated in their statements that the respondent was actually driving the bus at the time of accident and it was not being driven by Khumansinh Solanki who was regular driver of the bus and, therefore,

he has submitted that the authority was right in relying upon the statements of the passengers which were recorded by the police authority and the labour court has erred in not relying upon the said statements. He has further submitted that the labour court has erred in not considering the said statements on the ground that the said passengers were not examined in the departmental inquiry and no opportunity was given to the respondent. He has further submitted that before the police authority, statements of regular driver and conductor of the bus were recorded but the said statements were not considered by the labour court only on the ground that regular driver and conductor of the bus were not examined in the departmental inquiry. He has submitted that the labour court has erred in not considering and discarding the said statements of the regular driver and conductor of the bus. According to his submissions, if the labour court would not have ignored the statements of the passengers and regular driver and the conductor of the bus and would have relied upon such statements, then, it would not have interfered with the order of punishment. He has further submitted that in past, in the year 1987 and 1993, two serious accidents were committed by the respondent workman wherein two persons have died and there are other accidents also and, therefore, he has submitted that the labour court has committed gross error in not relying upon the statements of the passengers and regular driver and conductor of the bus as well as the past record of the respondent workman and, therefore, interference of this court is required.

On the other hand, learned advocate Mr. Vaishnav has submitted that before the departmental authority, only reporter was examined who was having no personal knowledge an no other persons were examined. He has further submitted that the statements recorded by the Investigating Officer in the criminal proceedings were not proved by the reporter before the departmental authority against the respondent and before the police authority, such statements were recorded in absence of the respondent and, therefore, the labour court was right in discarding such statements and in doing so, it has committed no error which would require interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. He has further submitted that the labour court has recorded the findings of fact after appreciating and considering the evidence on record and, therefore, this court cannot interfere with or reappreciate such findings of fact unless such findings of fact are perverse.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award in question. It is necessary to note that as alleged against the respondent, in the bus no. 7387 from Ahmedabad to Gir Gadhda Route, Khumansinh K. Solanki was the driver and while he reached at village Fedra from Ahmedabad, the respondent had quite unauthorizedly taken the bus from the driver of the bus on duty Shri Khumansinh K. Solanki and while it was being driven by the respondent, the bus met with an accident at some distance from Manvi where the bus had dashed with one truck coming from the opposite direction wherein five passengers have died. In connection with the said accident, the respondent was served with a charge sheet dated 1.1.1988. Reply thereto was submitted by the respondent. Thereafter departmental inquiry was initiated and ultimately show cause notice dated 4th October, 1989 was served upon the respondent workman and thereafter he was dismissed from service.

Before the labour court, the petitioner has produced relevant record which was forming part and parcel of the departmental inquiry wherein FIR of the accident,panchanama, charge sheet and other relevant papers including default card of the respondent workman were produced. Before the labour court, legality, validity and propriety of the departmental inquiry was not under challenge. Before the labour court, no oral evidence was led either by the petitioner or by the respondent. The labour court has examined the issues as to whether the departmental inquiry is legal and valid or not; whether the charge levelled against respondent workman has been proved or not and whether the punishment of dismissal imposed upon the workman is proportionate or not. The labour court, after appreciating the evidence before it and considering the fact that the legality and validity of the departmental inquiry was not challenged by the workman, has come to the conclusion that the departmental inquiry initiated against the workman was legal and valid. As regards the second aspect whether the charge levelled against the workman has been proved or not, the labour court has considered the reply vide Exh. 15 and 16 which was given by the respondent workman wherein it has been pointed out by the respondent workman that he was admitted in Namrata Hospital on 22nd October, 1987 for a period upto 31st October, 1987 and relating to that medical treatment, necessary papers were produced on record. It was his case that on the date of accident namely 24th October, 1987, he was not driving the vehicle but the vehicle involved in accident was being driven by the regular driver Khumansinh K. Solanki. The labour

court has also considered the evidence of the reporter who was examined in the departmental inquiry which was at Exh. 22 before the labour court. In the chief examination, the competent authority asked question to the reporter as to whether driver Shri Mulubhai Panchabhai Jalia was on duty or Khumansinh K. Solanki was on duty on the day of accident in the vehicle involved in the accident. The reporter has not been able to answer this question but he replied that for this answer, remarks made in T/5 Column are necessary. However, thereafter, the reporter has not been able to make it clear as to whether the vehicle involved in accident was driven by Khumansinh or the present respondent. The labour court has also considered that at the time of accident, no driver was present and competent authority has relied upon the other evidence. The labour court has also considered that from the log sheet and other record, it has not been proved as to who was the driver of the bus at the time of accident and the labour court has also appreciated that the reporter has been relying only upon the statements of the passengers and in view of such appreciation of the evidence on record, the labour court has concluded that it has not been established in the departmental inquiry that the second party workman was the driver of the bus at the time of accident. The labour court has further considered Exh. 24 wherein only examination in chief of the present respondent has been recorded wherein the respondent has stated that he is not admitting the charge and has further submitted that on the day of accident and at the time of accident, he was on leave and was admitted in the hospital. The labour court has appreciated that this evidence has not been cross examined by the other side. The labour court has further observed that no eye witnesses or passengers or any other independent witness or conductor has not been examined during the course of departmental inquiry and the corporation has not been able to establish the charge levelled against the respondent even prima facie. The labour court has further observed that in the report regarding accident at Exh.l 7 and the FIR, name of the respondent has not been mentioned as a driver of the bus but it has been recorded therein that Shri Khumansinh was the driver of the bus at the time of accident. The labour court has also observed that the respondent has been held guilty of the charge only on the basis of the police investigation but has not been able to prove it during the course of departmental inquiry it is clearly established that the whole departmental inquiry has been initiated only for the sake of initiation thereof. On the basis of such conclusions and observations, the labour court has held that the

petitioner has not been able to establish the charge levelled against the respondent workman at any stage of the departmental inquiry. The labour court has, therefore, found that the findings in the departmental inquiry were not based upon legal evidence and the statements of the passengers cannot be relied upon since the passengers were not examined in the departmental inquiry. The labour court has, therefore, held that the findings were vitiated. Thereafter, the labour court examined the question in exercise of the powers under section 11-A of the Act and has come to the conclusion after considering his past record that the respondent is entitled for being reinstated in service with continuity of service.

Thereafter, the labour court has examined the question as to whether the respondent is entitled for back wages for the intervening period or not. Considering the pendency of the reference before it for a period of about nine years or so and also considering that many reasons are connected with the pendency of the reference, the labour court held that it would be just and proper if the respondent is ordered to be reinstated in service with continuity of service with sixty per cent of the back wages for the intervening period and, therefore, the labour court made the award in question.

I myself have perused the whole award made by the labour court. So far as the award of reinstatement with continuity of service is concerned, according to my opinion, the labour court has not committed any error which would require interference of this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. Therefore, that part of the award in question has not been disturbed by this court.

However, so far as the award of back wages to the extent of sixty per cent for the intervening period is concerned, the labour court has committed an error in making such an award qua back wages. It is necessary to note that before the labour court, the respondent was not examined and he has not deposed before the labour court that he remained unemployed during the intervening period and, therefore, unless and until the respondent proves this aspect of his having remained unemployed during the intervening period, question of granting back wages does not arise. However, in absence of any such evidence, the labour court has awarded back wages to the extent of sixty per cent for the intervening period. According to my opinion, considering the over all facts and circumstances of the case and the evidence on record,

considering the pendency of the proceedings before the labour court for a period of about nine years and also considering the fact that the petitioner corporation has suffered loss of compensation of five persons who have lost their lives in the accident in question, and also considering that the petitioner is a public body, it would be just and proper and would met ends of justice if the award in question qua back wages only is reduced to 30 per cent only without disturbing the award of reinstatement in service with continuity of service.

Accordingly, this petition is partly allowed. Award made by the labour court Junagadh in Reference (LCJ) No. 186 of 1991 dated 30th March, 2000 is modified in so far as it relates to back wages from 60 per cent to 30 per cent for the intervening period. It is clarified that this court has not disturbed the award of reinstatement of the respondent with continuity in service. Rule is accordingly made absolute in terms indicated hereinabove with no order as to costs.

16.4.2002. (H.K. Rathod,J.)

Vyas